

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

BAY DELTA REGION

2825 CORDELIA ROAD, SUITE 100

FAIRFIELD, CA 94534



**AMENDMENT NO. 3  
(A Minor Amendment)**

**California Endangered Species Act  
Incidental Take Permit No. 2081-2013-027-03**

**Oliver de Silva, Inc.**

**Sunol Valley Aggregate Quarry Project in Alameda County**

**INTRODUCTION**

On October 8, 2013, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-027-03 (ITP) to Oliver de Silva, Inc. (Permittee), authorizing take of California tiger salamander (*Ambystoma californiense*) (Covered Species) associated with and incidental to the Sunol Valley Aggregate Quarry Project in Alameda County, California (Project). The Project as described in the ITP as originally issued by CDFW includes expansion of the overall production potential of the quarry by increasing the area under the Revised Alameda County Surface Mining Permit 30 (SMP-30) by approximately 58 acres. The quarry pit occupies approximately 32.5 acres within the 58-acre expansion area. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking on the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

In order to fully mitigate Project impacts of the taking on the Covered Species, CDFW determined that permanent protection and perpetual management of compensatory habitat is necessary. To meet this determination, Condition of Approval 9 of the ITP stipulated that if Security was provided in accordance with Condition of Approval 10.1, then within 18 months of the effective date of the ITP (which was April 9, 2015), the Permittee could either (1) purchase 18.7 acres of Covered Species credits from a CDFW approved mitigation bank or (2) provide for both the permanent protection and management of 18.7 acres of Habitat Management (HM) lands to meet the compensatory mitigation obligation. Pursuant to Condition of Approval 10.1, on October 11, 2013, the Permittee did ensure funding (Security) in the form of an irrevocable letter of credit to complete any activity required by Condition of Approval 9 that was not accomplished before Covered activities began.

On March 26, 2015, the Permittee requested a minor amendment (Minor Amendment 1) to the ITP for a six-month extension to complete the compensatory mitigation obligation of the ITP. On April 9, 2015, CDFW issued Minor Amendment 1.

On September 24, 2015, the Permittee requested a second minor amendment (Minor Amendment 2) to the ITP for an additional extension to complete the compensatory mitigation obligation of the ITP. On February 3, 2016, CDFW issued Minor Amendment 2.

Rev. 2013.1.1

On January 27, 2017, to complete the compensatory mitigation obligation, the Permittee purchased 18.7 credit acres at Ohlone West Conservation Bank, a CDFW-approved mitigation bank.

On November 13, 2023, the Permittee requested a third amendment (Minor Amendment 3) to the ITP for an extension of the ITP term for ongoing quarry operations and on December 11, 2023 requested to include adaptive management actions to the North Pond. The SMP 30 extends through at least 2042 so additional extensions may be requested in the future.

#### *Additional Background Information*

On September 12, 2014, the U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion (BO) (File no. 08ESMFOO-2013-F-0506-2) Appending the Sunol Valley Aggregate Quarry Project in Alameda County, California to the May 31, 2012 Programmatic Biological Opinion for U.S. Army Corps of Engineers (Corps) Permitted Projects Utilizing the East Alameda County Conservation Strategy that May Affect Federally Listed Species in East Alameda County, California (U.S. Army Corps of Engineers (Corps) file number 1995-21470S). Federally-required habitat compensation for impacts included, in part, a combination of aquatic enhancement at a pond (North Pond) located northeast of Pit F4 and grassland avoidance and management actions near the North Pond. This modification was to reduce overall depth and create both shallow and deep-water habitat to support different life stages of California tiger salamanders and California red-legged frogs.

The Permittee provided a North Pond Area Long-term Management Plan (LTMP) dated September 22, 2014 that defined the required management actions in this area and provided a schedule for future management actions for the North Pond and associated grasslands. The pond work was completed in 2015. Annual monitoring of the enhanced North Pond has shown breeding of the Covered Species, but, to date, no Covered Species individuals have successfully metamorphosed.

The LTMP requires installation of moisture refuges for the Covered Species, monitoring, and annual maintenance, such as mowing the grassland area surrounding the pond. The LTMP also provides a strategy to manage the North Pond for the benefit of the Covered Species during the 30-year quarry lease term.

The LTMP and North Pond enhancement and maintenance were not included in the original ITP or the two previous amendments, but the Permittee requested to include adaptive management activities and monitoring activities at the North Pond as part of this current amendment.

This Minor Amendment No. 3 (Amendment) makes the following changes to the existing ITP:

First, this Amendment extends the term of the ITP from December 31, 2023 to December 31, 2033.

Second, this Amendment includes development and implementation of an Adaptive Management Plan for North Pond, a pond that was originally designed and constructed to provide breeding habitat and surrounding upland habitat for the Covered Species.

Third, this Amendment includes take authorization for the Covered Species for activities related to North Pond.

Fourth, this Amendment includes security for pond remediation and management activities.

Fifth, this Amendment updates contact information and addresses.

## **AMENDMENT**

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

Page 1 shall be amended to read:

### **Effective Date and Expiration Date of this ITP:**

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on December 31, ~~2023~~ ***2033***.

Page 4 under **Project Description** shall be amended to read:

***The Project includes monitoring and management of North Pond as required by the US FWS Biological Opinion (BO) (File no. 08ESMFOO-2013-F-0506-2) Appending the Sunol Valley Aggregate Quarry Project in Alameda County, California to the May 31, 2012 Programmatic Biological Opinion for U.S. Army Corps of Engineers (Corps) Permitted Projects Utilizing the East Alameda County Conservation Strategy that May Affect Federally Listed Species in East Alameda County, California (U.S. Army Corps of Engineers (Corps) file number 1995-21470S). As identified in the BO and the North Pond Area Long-term Management Plan (LTMP) the 0.6-acre North Pond was required to be modified to reduce***

***overall depth and create both shallow and deep-water habitat that support different elements of the Covered Species and California red-legged frog life history.***

***As identified in the BO, the pond was designed to retain water during years with normal rainfall through August 31 and dry prior to fall rains. Since the pond has not met that intended goal, the Permittee will provide an Adaptive Management Plan that includes measures to remediate the pond hydroperiod to meet the original goals and provide aquatic and upland habitat for the Covered Species.***

Page 4, under **Impacts of the Taking on Covered Species** shall be amended to read:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above in the 310-acre active quarry area expected to result in incidental take of individuals of the Covered Species include excavation, grading, trenching, **mowing**, heavy equipment, and other vehicle traffic, auguering, **planting of vegetation**, foot traffic (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as crushing or injuring Covered Species that enter into the operations area from off-site; excavating, trenching, or grading over Covered Species that may be living in the expansion area **or the area within and around North Pond**, killing or injuring a Covered Species while auguering holes for revegetation. Death from desiccation or predation may occur from Covered Species entering into the operations area where there is no cover. Death may occur if adult Covered Species attempt to breed in quarry pits and become trapped or are predated upon. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of catch, capture, or attempt to do so of the Covered Species from relocating or moving Covered Species out of harm's way. The areas where authorized take of the Covered Species is expected to occur include the 310-acre active quarry area, **the 0.6-acre North Pond and the 10.2-acre surrounding grassland**, and the 58-acre expansion site contained within the 310-acre quarry area (Figure 2) (Project Area). The quarry pit, haul roads, and safety berm will occupy 34.94 acres within the 58-acre expansion site but the entire 58 acres is being covered in order to accommodate landscape planting along Calaveras Road.

Page 11, Condition of Approval 8.2 Exclusion Barrier Monitoring Program and MMRP shall be amended to read: For the term of the ITP, wood coverboard traps (2' x 4' x 1/2" plywood) shall be positioned in pairs placed not more than 200 feet apart and alternating along the inside and outside of the exclusion barrier, unless otherwise approved in writing by CDFW. For the period between October 15 and June 15, the Designated Biologist shall inspect coverboard traps once a week during the morning hours. At any time of year, **during any rain event and** within two days following a rain

event coverboard traps shall be inspected by the Designated Biologist. The Designated Biologist shall document all vertebrate species present and provide the exact location of any Covered Species found. ***The location shall be documented in the Monthly Report and on a map showing the numbered coverboard locations along the exclusion barrier. The map shall be updated monthly, if Covered Species are found, and submitted with the Monthly Report. Photographs of Covered Species shall be included with the map for identification purposes.*** Any Covered Species found shall be relocated in accordance with Condition of Approval 8.6 and CDFW notified as required by Condition of Approval 7.9.

Page 13, under Condition of Approval 8 and the MMRP, shall be amended to read:

***8.12 Adaptive Management Plan. Permittee shall develop and implement an Adaptive Management Plan for North Pond. The management plan shall be provided to CDFW for review and approval on or before June 30, 2024. The management plan shall include measures to increase the pond hydroperiod, promote growth of some emergent vegetation (no more than 50% of the pond area), and manage the surrounding uplands for the Covered Species. The pond shall be monitored and adaptively managed for the term of the Project.***

Page 14, under Condition of Approval 9.0 and the MMRP, shall be amended to read:

***9.1.6 North Pond Adaptive Management costs as described in Condition of Approval 8.12 estimated at \$100,000 for pond remediation and \$50,000 for monitoring, management and additional remediation as necessary for a total of \$150,000.00.***

Page 18, under Condition of Approval 10 and the MMRP, shall be amended to read:

10.1 Security Amount. The Security shall be in the amount of ~~\$512,575.00~~ ***\$150,000.00***. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

Page 20, under Notices shall be amended to read:

#### **Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program

Minor Amendment No. 3  
Incidental Take Permit 2081-2013-027-03  
OLIVER DE SILVA, INC.  
Sunol Valley Aggregate Quarry Project

~~1416 Ninth Street, Suite 1260~~  
~~Sacramento, CA 95814~~  
**Post Office Box 944209**  
**Sacramento, CA 94244-2090**

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2013-027-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

~~Scott Wilson, Acting~~  
**Erin Chappell**, Regional Manager  
California Department of Fish and Wildlife  
~~7329 Silverado Trail~~  
~~Napa, CA 94558~~  
~~Telephone (707) 944-5517~~  
~~Fax (707) 944-5563~~  
**2825 Cordelia Road, Suite 100**  
**Fairfield, CA 94534**  
**Telephone (707) 428-2002**

Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Marcia Grefsrud  
~~7329 Silverado Trail~~  
~~Napa, CA 94558~~  
**2825 Cordelia Road, Suite 100**  
**Fairfield, CA 94534**  
Telephone (707) 644-2812  
Email: [Marcia.Grefsrud@wildlife.ca.gov](mailto:Marcia.Grefsrud@wildlife.ca.gov)

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

## FINDINGS

*Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment*

*increase other Project impacts on the Covered Species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subd. (b)(2)).*

Discussion: This Amendment makes five specific changes to the ITP as originally issued. This Amendment extends the term of the ITP by 10 years to December 31, 2033, includes development and implementation of an Adaptive Management Plan for North Pond, includes take authorization for activities related to North Pond, includes security requirement for pond remediation and management activities, and updates contact information and addresses. The resulting impacts to the Covered Species, however, including the number of acres of habitat that will be lost, etc. as a result of the Project, will remain the same.

CDFW has determined that changes to circumstances, project description, and/or conditions of approval will not increase the amount of take or the severity of other impacts of the taking on the Covered Species. Given the circumstances of this Project, CDFW believes that the changes to the Project or Conditions of the ITP described in this Amendment, including remediation and monitoring of North Pond, will not increase impacts to the Covered Species.

*Issuance of this Amendment does not affect CDFW’s previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).*

Discussion: CDFW determined in October 2013 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: 1) will have no effect on the amount or severity of Project impacts on the Covered Species, as discussed above, and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee’s continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP’s Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

*None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.*

Discussion: CDFW issued the ITP in October 2013 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the environmental impact report certified by

Alameda County Planning Department as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment is a minor change to the original ITP. CDFW finds for the same reasons under CEQA that approval of the Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental effects than previously analyzed and disclosed by Alameda County Planning Department during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP as amended. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

*CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).*

Discussion: This Amendment extends the term of the ITP to December 31, 2033, includes development and implementation of an Adaptive Management Plan for North Pond, includes take authorization for activities related to North Pond, includes security requirement for pond remediation and management activities, and updates contact information and addresses. These changes to the ITP will not: (1) increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, (2) affect Permittee's substantive mitigation obligations under the ITP, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, this Amendment will not significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

California Department of Fish and Wildlife  
Habitat Conservation Planning Branch  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Alternatively, the Permittee shall email the digitally signed ITP to [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). Digital signatures shall comply with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned.

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**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 3/8/2024.

DocuSigned by:

*Erin Chappell*

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Erin Chappell, Regional Manager  
Bay Delta Region

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

DocuSigned by:

*Jim Summers*

By: 9BEEAFE70A57456... Date: 3/11/2024

Printed Name: Jim Summers Title: Executive Vice President

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